

**CONFLICT OF INTEREST
ADVISORY COMMITTEE**

**PRELIMINARY REPORT
APRIL 1985**

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ACKNOWLEDGEMENTS

The Committee extends its appreciation to the Departments of Municipal Affairs in all other provinces and the territories for their assistance in providing copies of their current legislation and comments; to the Federation of Canadian Municipalities for its assistance in arranging a meeting of the Committee with the presidents and executive directors of the municipal associations of the other provinces and territories; and to Margaret Suelzle for her secretarial support.

CONFLICT OF INTEREST ADVISORY COMMITTEE

Mayors/Reeves and Members of Council:

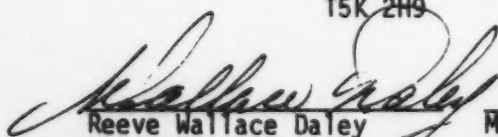
In accordance with its terms of reference the "Conflict of Interest Advisory Committee" has prepared a preliminary report which is intended to provoke discussion of the principles on which legislation to protect the public interest should be based.

This report reviews the history of the disqualification provisions of the Municipal Government Act. It provides a summary of the related provisions of the Legislative Assembly Act. The provisions in other provinces are reviewed in general terms with more detailed information provided on business and family relationships. A summary of the 22 submissions received is provided. Finally, the committee has proposed some principles for consideration and presents the rationale for the principles.

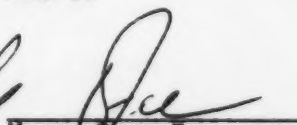
The committee hopes that this preliminary report will serve as a focus for discussion and thought by councils and other interested individuals and looks forward to receiving their comments.

Comments should be submitted before September 15, 1985, to

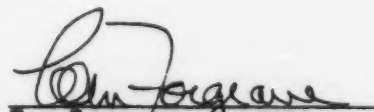
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A LOOK BACK

The earliest municipal legislation affecting the area now known as Alberta was the "An Ordinance Respecting Municipalities" enacted by the Lieutenant-Governor of the North-West Territories on October 4, 1883. Commonly referred to as the Northwest Municipal Ordinance it contained the foundations of today's conflict of interest legislation.

The Ordinance provided as follows:

"6. Any person entitled to vote for a Municipal Councillor is entitled to be elected as such, except those who are disqualified by the reasons following:
(1) Any minister or priest of any religious denomination;
(2) Any Sheriff or Sheriff's officer, or any officer of any court of law;
(3) Any person having any contract with the Municipality or having any unsettled or disputed claim therewith;
(4) Any officer of the Government or any officer of Municipality.

7. The persons qualified to vote at the first election for Councillors shall be male occupants of lands within the Municipality for not less than three months previous to the proclamation, British subjects, over twenty-one years of age. Provided that no person shall be eligible as Councillor who is not resident within the Municipality.

14. In the event of any Councillor refusing or neglecting to attend the meetings of the Council for three consecutive meetings, his seat shall be declared vacant, unless he shall have received permission to absent himself from the Council by a majority vote of the same at a regular meeting of the Council, which shall in no case be for a longer period than six months.

27. The qualification of electors under this Ordinance shall be, except in the first election, all male persons over twenty-one years of age, British subjects, being assessed for three hundred dollars or over, either in their own right or in the right of their wives, on the last revised assessment roll.

30. Except as hereinbefore provided the qualifications of a Councillor shall be those of a qualified voter as provided in the twenty-seventh section of this Ordinance, being assessed for not less than six hundred dollars, either in his own right or the right of his wife, on the last revised assessment roll."

By 1942 the provision had become more lengthy in both the Towns and Villages Act and the Municipal Districts Act, a number of exceptions or "cases of non-applicability" had been added as had some voting prohibitions.

Candidates for council were to be British subjects at least 21 years of age who could read and write and were residents in the municipality. Their names had to be on the voters list and assessment roll and in towns and villages the minimum value of the assessment was to be \$100.00. They were not qualified as a candidate if they owed taxes for the two or more years preceding the election.

The following were not eligible for election or to sit and vote on the council:

- (a) any judge of any court of civil jurisdiction;
- (b) any sheriff, deputy sheriff, or baliff;
- (c) any gaoler or keeper of any house of correction;
- (d) any constable, assessor, secretary-treasurer, auditor or other paid official of the municipality;
- (e) any person who is surety for an officer or employee of the council;
- (f) any person who has been convicted of a criminal offence punishable by death or imprisonment for more than two years;
- (g) any person who having been elected as a member of the council has resigned his seat thereon on account of any matter or thing which would disqualify him for election as a member of the council or to sit or vote therein or for the purpose of avoiding the making of restitution for any money received by him in contravention of any of the provision of this Act, until the expiration of three years from the date of his resignation.

In addition disqualification for holding a contract with the municipality was introduced in these Acts:

Municipal Districts

any person having himself or by or with or through another an interest in any contract with the council, or with any person or persons acting for the council or in any contract under which any money of the municipal district is to be paid for any service, work, matter or thing;

Towns and Villages

any person who is for the time being a party of any subsisting contract with the town or village under which any money of the town or village is payable or may become payable for any service, work, matter or thing or who has any pecuniary interest in any such contract whether the interest is direct or indirect, or who is for the time being a party to any agreement for the purchase of any land from the town or village.

The exclusion provisions were that a person was not ineligible by reason only:

- (a) of his being a shareholder in an incorporated company having a contract or dealings with the council, unless the contract or dealings are for the building, construction or repair of a public work;
- (b) of his contracting with the council for the supply to him of any service or commodity which the council has statutory authority to supply;
- (c) of his being interested in any publication in which official advertisements of the council appear or which is supplied to the council or any official thereof at the usual rates;
- (d) of his having a lease of twenty-one years or upwards of any property from the municipality.

The voting prohibition was as follows:

No councillor being a shareholder in any company shall vote in the council on any question affecting the company, and no councillor being a leaseholder from the municipality shall vote in the council on any question affecting any lease from the municipality.

By 1955 the City Act had joined the list of municipal legislation. Qualifications for election to all councils were more or less standardized along the 1942 model although candidates now had to be able to read and write English and had to be Canadian citizens rather than British subjects. In cities, however, a candidate had to have been a resident of the city for the twelve consecutive months preceding nomination day and could not be a candidate for more than one of the offices of mayor, alderman or school trustee.

Other variations began to creep in, for example, on the prohibitions on contracts:

Municipal Districts

Any person having himself or by or with or through another an interest in any contract with the council, or with any person or persons acting for the council, or in any contract under which any money of the municipal district is to be paid for any service, work, matter or thing.

Town and Villages

A person who,

- (i) for the time being is a party to a subsisting contract with the town or village under which money of the town or village is payable or may become payable for any service, work, matter or thing,
- (ii) has a pecuniary interest in such a contract whether the interest is direct or indirect, or
- (iii) is for the time being a party to an agreement for the purchase or lease of land or other property from the town or village;

Cities

A person who is for the time being a party to any subsisting contract with the city under which any money of the city is payable or may become payable for any service, work, matter or thing, or who has any pecuniary interest in any such contract, whether the interest is direct or indirect,

In regard to criminal convictions, reference to punishment by death had been added in all three Acts but imprisonment in cities was referred to as for more than five years while in other municipalities it was for more than two years.

In the exclusion provisions, the 21 year lease had been deleted and had been replaced in towns, villages and municipal districts with "selling or leasing to the council land, or interest in land, that the council has statutory authority to expropriate". However no similar provision was made for cities.

In cities, towns and villages, but not municipal districts,
additional exclusions were added

- a) of sales of goods and merchandise to the municipality or to persons contracting with the municipality and made by a dealer in those goods and merchandise incidental to and in the ordinary course of his business at competitive prices,
- b) of any services rendered by a medical man to indigents who are residents of the municipality and for which the municipality is or may become liable to pay, or
- c) of professional services rendered by a barrister and solicitor to the municipality when the charges for the services have been taxed under the provisions of the Rules of the Supreme Court of Alberta and the amount of the charges as taxed does not exceed the sum of two hundred dollars in any year.

In towns and villages, but not in any of the others, employment
as medical officer of health was also excluded.

The voting prohibition for municipal districts had been changed
to:

"No councillor who is a shareholder in any company shall
vote in the council on any question affecting the company,
and no councillor who sells or leases to the municipal
district shall vote in the council on any question affecting
any sale or lease to the municipal district."

In towns and villages a different evolution had taken place:

No mayor or councillor shall vote in the council

- (a) on a question affecting a company of which he is a shareholder,
- (b) on any contract for the sale of goods and merchandise to which he is a party,
- (c) on a question affecting his selling or leasing of land or interest in land to the town or village.

In cities, a still different variation had been introduced:

No mayor or alderman shall vote in the council

- (a) on any question affecting a company of which he is a shareholder,
- (b) on any contract for the sale of goods and merchandise to which he is a party,
- (c) on any question affecting the lease of any property of which he is the leaseholder from the city, or
- (d) on any question affecting land of which he is the purchaser from the city under an agreement of sale.

By the mid-1960's it became apparent that standardization of most of the legislation affecting municipalities of whatever status would be desirable. These Acts were passed in 1967 and 1968, based on function rather than municipal status:

Municipal Election Act

Municipal Government Act

Municipal Taxation Act

The Municipal Election Act contained standard qualifications for eligibility for candidates.

The Municipal Government Act contained the disqualification provisions which were:

29.(1) A person is not qualified to remain a member of the council if he

- (a) is convicted of an indictable offence punishable by death or by imprisonment for more than five years, or

- (b) absents himself, without being authorized by a resolution of the council to do so, from the meetings of the council for three regular consecutive meetings, or
 - (c) ceases to be a resident of the municipality, or
 - (d) is convicted of making a false statement in his acceptance of nomination, or
 - (e) ceases to be a Canadian citizen or British subject, or
 - (f) uses information gained through his position as a member of a council to gain a pecuniary benefit either directly or indirectly, or
 - (g) is a judge of a court of civil jurisdiction, or
 - (h) is an undischarged bankrupt, or
 - (i) is a surety for an officer or employee of the municipality, or
 - (j) is the auditor of or an officer or employee of the municipality, or
 - (k) is indebted to the municipality for taxes or any other debt in default exceeding \$50, excluding therefrom
 - (i) any indebtedness for current taxes, and
 - (ii) any indebtedness for arrears of taxes for which he has entered into a consolidation agreement with the municipality, if he is not in default in the payment of any sum payable under the agreement,or
 - 1) is a party to a subsisting contract with the municipality under which money of the municipality is payable or may become payable for any work, service, matter or thing, or
 - (m) has a pecuniary interest, whether direct or indirect, in any subsisting contract with the municipality under which money of the municipality is payable or may become payable for any work, service, matter or thing, or
 - (n) is a party to a contract for the purchase or lease of real or personal property from the municipality.
- (2) Subsection (1) does not apply to a person by reason only

- (a) of his being a shareholder in a corporation having a contract or dealings with the council,
 - i) unless he holds or there is held by himself and spouse, parent children, brothers and sisters, more than 25 per cent of the issued capital stock of the corporation, or
 - (ii) unless the contract or dealings are for the building, construction or repair of a public work of the municipality, or
- (b) of his contracting with the council for the supplying to him of service , utility or commodity that the council has statutory authority to supply, or
- (c) of his being interested in a publication in which official advertisements of the council appear or that is supplied to the council thereof at the usual rates, or
- (d) of his selling or leasing to the municipality, land or interest in land that the council has authority to expropriate, if
 - (i) the person has been the owner of the land for not less than three years, and
 - (ii) the amount of the compensation has been fixed by an award made under the The Expropriation Procedure Act, or, if the amount of the compensation has been agreed upon, a judge of the district court upon an application made by and at the expense of the municipality concerned has certified in writing that the amount of the compensation is fair and reasonable, or
- (e) of the sale of goods, merchandise or services to the municipality or to persons contracting with the municipality and made at competitive prices by a dealer in those goods, merchandise or services incidental to and in the ordinary course of his business, or
- (f) of services that are rendered by any person to indigents who are residents of the municipality and for which the municipality is or may become liable to pay, or of services rendered by any person where the municipality has provided a subsidy to secure his services, or

- (g) of his being appointed to a position under The Civil Defence and Disaster Act, or
 - (h) of professional services rendered by a barrister and solicitor to the municipality, if the charges for the services have been taxed under the Consolidated Rules of the Supreme Court of Alberta, or
 - (i) of the receipt by him of a gratuity or allowance for services on a committee or board appointed by or responsible to the council, or
 - (j) of his being a member of a co-operative association, or
 - (k) of his being the vendor or purchaser or assignor or assignee of land bought or sold under The Farm Purchase Credit Act, 1963, or
 - (l) of his being a party to a contract for the purchase or lease of real or personal property from the municipality entered into before he became a member of the council.
- (3) Clause (c) of subsection (1) does not apply with respect to summer villages.
30. (1) A member of a council ceases to be qualified to remain a member of the council if he fails to comply with subsection (2) or (3).
- (2) A member of council shall not vote in the council
- (a) on any question
 - (i) affecting a private company of which he is a shareholder, or
 - (ii) affecting a public company in which he holds more than 1 per cent of the number of shares issued, or
 - (iii) affecting a partnership or firm of which he is a member, or
 - (iv) affecting a company of which he is a director unless he is a director only by reason of being a member of the council and the council, by resolution, authorizes him to vote,or
 - (b) on a contract for the sale of goods , merchandise or services to which he is a party, or

- (c) on a question affecting his selling or leasing land or an interest in land to the municipality, or
 - (d) on any question in which he has a direct or indirect pecuniary interest.
- (3) When a member of a council is not entitled to vote by virtue of subsection (2), he shall so declare before discussion of the question and shall not participate in the debate and the abstention shall be recorded.

By 1984 these provisions had been further amended as follows:

- 29(1) (a) adds reference to an offence under section 112 of the Criminal Code (Canada) (bribery)
- (e) deletes reference to British subject
 - (g) adds a Senator, Member of Parliament or Member of the Legislative Assembly.
 - (k) adds a further exclusion of arrears of taxes for the immediately preceding year.

Two additional exclusions have been added in section 29(2)

- a) of his performing work for or providing a service to the municipality in the case of an emergency and for which he is paid normal rates for the work or service provided,
- b) of his being a party to a contract for the purchase from the municipality of property if
 - (i) the property is, following application for its purchase by a member of the council, advertised for sale by public tender at least once a week for 2 successive weeks in a newspaper circulated within the municipality,
 - (ii) a notice of the sale by public tender is posted in the municipal office,
 - (iii) the highest tender is accepted,
 - (iv) the sale to a member of the council is approved by a 2/3 majority of the council, and

(v) not more than one sale of one parcel of residential or farm property is made to the member of council during any one term of office of the member.

In Section 30 a definition of companies has been added:

(1.1) In this section,

- (a) "private company" means a private company as defined in the Companies Act and a corporation as defined in the Business Corporation Act that is not a distributing corporation as defined in that Act;
- (b) "public company" means a public company as defined in the Companies Act and a distributing corporation as defined the Business Corporations Act.

Perhaps the major change has been the enactment of several exclusions to the voting prohibitions arising from various judicial interpretations. These are:

- (4) This section does not apply to a member of a council by reason only of his being a member of the board of directors of
 - (a) a foundation or association formed for the purpose of staging provincial, national or international sporting events, or
 - (b) a Business Revitalization Zone Association.
- (5) This section does not apply to a member of a council by reason only that the question affects
 - (a) the interests or business of a private company, of which the member is a shareholder, in a manner common with all other, or a substantial number of other, persons who carry on business in the municipality and who have interests or business in common with the interests or business of that private company,
 - (b) the interests or business of a public company in which the member holds more than 1% of the number of shares issued, in a manner common with all other, or a substantial number of other, persons who carry on business in the municipality and who have interests or business in common with the interests or business of that public company,

- (c) the interests or business of a partnership or firm, of which the member of council is a member, in a manner common with all other, or a substantial number of other, persons who carry on business in the municipality and who have interests or business in common with the interests or business of that partnership or firm,
 - (d) the interests or business of a company, of which the member is a director, in a manner common with all other, or a substantial number of other, persons who carry on business in the municipality and who have interests or business in common with the interests or business of that company,
 - (e) a contract for the sale of any goods, merchandise or services that the member is entitled to buy or sell on terms common with all other, or a substantial number of other, persons in the municipality, or
 - (f) any thing in respect of which the member has a direct or indirect pecuniary interest if the members interest in it is one which is in common with all other, or a substantial number of other, person in the municipality.
- (6) For the purposes of subsection (5), "persons who carry on business in the municipality" includes partnerships or firms carrying on business in the municipality.

Further refinements have been proposed for 1985 enactment in order to facilitate the operation of the existing provisions.

In 1980 the Alberta Urban Municipalities Association appointed a committee under the chairmanship of then Alderman C. A. Knight of Fort McMurray to review conflict of interest legislation. After considerable research this committee presented a report to the AUMA Board of Directors recommending a separate Conflict of Interest Act.

The draft Act prepared by the Knight Committee would have applied the conflict of interest provisions to boards and committees as well as to the council itself. Among the other changes proposed were:

- a) raising the limit of indebtedness from \$50 to \$1000,
- b) revising the procedures for a member to purchase or lease land from the municipality,
- c) requiring the recording of the reason for an abstention and the compilation of these who a record of disclosure open to review by electors, and
- d) the potential for inclusion of a blind trust arrangement.

The proposed Act did not specifically mention

- (a) loss of Canadian citizenship,
- (b) bankruptcy,
- (c) surety for an official or employee, or
- (d) being the auditor, an officer or employee of the municipality

as disqualifying conditions. Nor did it include such existing exclusions as business done with municipality in the ordinary course of business at competitive prices, interest in a publication in which official announcements of the municipality appear and many of the other community organization exceptions currently allowed.

The AUMA Board circulated the report to the membership in May, 1983. Twenty-nine members responded. About 1/3 found the proposed Act acceptable as circulated or with minor changes seeing it as better defining potential questions relating to conflict. The remainder, who wanted the proposed Act rewritten or the existing legislation retained as is or with some amendment, saw the proposal as too restrictive speculating that it would eliminate large numbers of people from service to their communities. One respondent criticized the proposal as appearing to be based on the premise that all elected officials are not to be trusted.

At the 1983 AUMA convention, a resolution directing the Board to proceed to propose a separate Act was defeated. The Board, therefore, ceased consideration of the proposal and it has never been officially presented to the government. A similar resolution was passed at the 1984 convention at which the Minister of Municipal Affairs announced that the current review would be undertaken and its results enacted prior to the 1986 municipal elections.

A review from a historic perspective would be incomplete without some mention of judicial consideration of disqualification actions. A review of reported cases in the past decade indicates that the courts, in all the cases cited in the decisions, have expected a very high standard of conduct from members of municipal councils.

The general principles of the decisions are:

- a) no person should be a member of a municipal council who cannot give a disinterested vote on a matter
- b) if a member has a pecuniary interest or an interest capable of being measured pecuniarily there is a conclusive presumption of bias. A bias is presumed from the mere fact of the existence of an interest without any consideration of whether the member acted partially or impartially.
- c) the degree or extent of the interest will not be weighed - even if the amount is trifling it makes no difference.
- c) disqualification provisions are highly penal in nature and operate to defeat the will of the electors as expressed at an election and so they must be strictly construed.

As with the disqualification provision themselves, the right of electors to challenge the qualifications of elected officials has evolved from the Northwest Municipal Ordinance which provided that:

176. A candidate for election as Councillor or Mayor or any five voters under this Ordinance may within fourteen days after the Declaration of Election by the Returning Officer protest the right of a Councillor or Mayor declared elected to act as such by serving a notice on the Clerk of the Municipality, and on the person whose seat is protested, in writing, on any ground hereinbefore set forth, but the party whose seat is protested shall continue to hold office if declared elected until the final determination of the matter by the Stipendiary Magistrate.

177. All proceedings under the above section shall be had by petition before a Stipendiary Magistrate, in which shall be set forth the fact and reasons alleged in support of the protestation, and the Stipendiary Magistrate shall hear such evidence as may be adduced and thereupon may amend the Declaration of the Returning Officer or confirm the same or declare the election void, and order a new election with such costs against either party as he may determine.

By 1942 discrepancies had begun to appear in the provisions of the Municipal District Act and the Towns and Villages Act. Common to both Acts were provisions that the seat of a member of council was to become vacant by if he

- (a) is convicted of felony; or
- (b) makes an assignment in bankruptcy for the general benefit of his creditors or is adjudged a bankrupt; or
- (c) without being authorized by a resolution of the council so to do absents himself from the meetings of the council for three consecutive months; or
- (d) ceases to be a resident of the municipality; or
- (e) becomes disqualified from sitting or voting in the council under the provisions of the disqualification section of the relevant Act; or
- (f) is convicted of signing an acceptance of a nominated person containing a false statement.

The Municipal Districts Act added a further reason:

- (g) he is convicted of an offence under the Defence of Canada Regulations or is interned pursuant to those regulations.

Both Acts provided that

If any elector files an affidavit showing that a member of the council, --

- (a) has forfeited his seat on the council or his right thereto; or
 - (b) never was qualified as a member of the council; or
 - (c) has become disqualified as a member of the council; or
 - (d) has otherwise vacated his seat,--
- and pays into court the sum of twenty-five dollars as security for costs to abide the event of the application, the judge may on an ex parte application, direct that notice may be served upon such person of an application for an order ousting him from office, and if upon the hearing of the application the judge upon affidavit or oral evidence is satisfied that the member of the council has forfeited his seat or is disqualified, or that his seat is vacant, the judge may declare his seat vacant or refuse the application and in either case with or without costs.

These provisions were basically continued through 1955. Municipal district councillors continued to be the only elected officials specifically subject to disqualification for an offense under the Defence of Canada Regulations. In the City Act rather than a "felony" reference was to "a criminal offense punishable by death or by imprisonment for more than five years".

The major change introduced in the early 1950's in all three Acts was that if one of the events which give rise to a vacated seat occurred "the council shall declare his seat to be vacated".

In the 1968 Municipal Government Act all of the disqualification provisions were consolidated into sections 29 and 30, quoted earlier. The Act then went on to provide:

31. Where a member of a council is not qualified under section 29 or 30 to be a member of the council
 - (a) the member shall forthwith resign his seat on the council, and
 - (b) if he does not so resign, the council may, by resolution, declare him to be disqualified, or may apply to a judge for an order declaring his seat vacant.

32. (1) Upon the ex parte application of an elector who
 - (a) files an affidavit showing that a member of a council never was or has ceased to be qualified as a member of the council, and
 - (b) pays into court the sum of \$50 as security for costs to abide the event of the application,

a judge of the Supreme or a district court may direct that there be served upon that member notice of an application for an order declaring him to be disqualified to be a member of the council.

 - (2) Upon hearing the application and such evidence, either oral or by affidavit, as he requires the judge
 - (a) may, by order, declare the member to be disqualified, or
 - (b) may refuse the order,and, in either case, with or without costs.
 - (3) Where a judge declares a member of a council disqualified his seat on the council thereupon becomes vacant.
 - (4) Where a judge declares a member of a council disqualified for a contravention of clause (f) of subsection (1) of section 29, he may order the disqualified member to pay the total amount of any profit so made to the municipality.

33. (1) Where a person is declared disqualified pursuant to section 31 or 32 and appeals therefrom he remains disqualified until the final determination of the appeal.
- (2) If, upon the final determination of the appeal, the disqualification is set aside,
- (a) the court shall reinstate the member of the council for any unexpired portion of the term of office for which he was elected and require any person who had been elected to fill the balance of that term to vacate the office, but
- (b) if the term of office for which the member was elected has expired, he shall not be reinstated, but he is eligible to be elected at the next ensuing election in the municipality, if otherwise qualified.

In 1973 the power of council to declare one of its members disqualified (section 31(b)) was removed on the basis that this was a judicial function not appropriate to a council. Other than that sections 31 and 32 remain today with minor wording changes. Section 33 is now section 35 and two new sections, now numbered 33 and 34, have been enacted.

- 33 (1) When an application under section 31 or 32 is before a judge and the judge finds that a member is disqualified, he may nevertheless dismiss the application if he is of the opinion that the disqualification arose inadvertently or by reason of a bona fide error in judgement.
- (2) This section applies to an application continued or commenced under section 34.

- 34 1) An application alleging a contravention of section 29(1)(f) or (n) or of section 30 may be commenced pursuant to section 31 or 32 or continued under either of those sections, notwithstanding that an election has been held between the time when the disqualification of the member or former member of council is alleged to have arisen and the time at which the application was or is commenced and the judge may make an order under section 31 or 32.
- (2) Subsection (1) applies whether or not the member in respect of whom the application being brought
- (a) resigns before or after the election,
 - (b) was re-elected in the election,
 - (c) was not re-elected or did not run in the election, or
 - (d) has completed a term of office.

As indicated by this historical review the general trend in conflict of interest legislation in Alberta over the past 102 years is that it has become more complex and more oriented to judicial interpretation as the years have progressed. This has given rise to frustration on the part of elected officials who do not find it easy to determine whether or not they are complying with the statutes. It may also have discouraged active business people from seeking public office in their communities.

The Minister of Municipal Affairs in announcing the current review of the legislation said:

"This is an extremely important matter which should be resolved prior to the 1986 elections to permit those people who think about serving the public of Alberta an opportunity to know where they stand."

ALBERTA LEGISLATIVE ASSEMBLY ACT

The terms of reference of the committee require it to review the disqualification provisions of the Alberta Legislative Assembly Act.

This Act provides that a member of the Legislative Assembly is disqualified if he:

- (a) ceases to be a Canadian citizen;
- (b) contravenes the Election Finances and Contributions Disclosure Act;
- (c) becomes a member of the Senate;
- (d) becomes an employee of the Crown in the right of Canada or the holder of any office appointed by or at the nomination of Canada to which a salary is attached;
- (e) becomes an employee of the Crown in the right of Alberta;
- (f) is appointed to an office listed in the Schedule to the Act;
- (g) or a person directly associated with him becomes party to a contract:
 - (i) to borrow money from a treasury branch;
 - (ii) to convey an interest in land to the Crown except through an expropriation or where the court has certified that the price is fair and reasonable;
 - (iii) to which the Crown is also party for the construction, demolition, alteration or repair of a public work;
 - (iv) under which the Alberta Agricultural Development Corporation or the Alberta Opportunity Company lends money to or guarantees a debt of the member or person directly associated with him;
 - (v) to which the Crown is also party for any other purpose if the member or person directly associated with him received a preference or a benefit not available to other members of the public under contracts of the same class;
- (h) receives a payment from the Crown which is not related to remuneration for his office as a member or for some other office he is permitted to hold as a member under the Act or to a standard program of the province authorized by legislation, a resolution or order of the assembly, or a supply vote or Heritage Fund vote.

Each member, within 90 days of becoming a member, is to file with the clerk a return showing the name and address of each person with whom he is directly associated and is to report any changes within 30 days. After the end of each fiscal year the Provincial Treasurer is to prepare a report and subsequently file it with the Legislative Assembly showing the names of persons directly associated with each member,

payments made to the member during the fiscal year and payments made to the persons directly associated with the member. The payments to a member for his service as a member of the Assembly, board or committee or as a member of the Executive Council are excluded as are payments under a number of specified programs of personal support and other programs for which the law requires confidentiality with respect to the identity of recipients.

If an action is initiated to disqualify a member for accepting a prohibited payment or being party to a prohibited contract, the court may give directions as to how the member may remove the disqualification. If a member does not follow the directions or after all appeals have been exhausted he is still found to be disqualified, the judgement is referred to the Select Standing Committee on Privileges and Elections, Standing Orders and Printing.

The Select Standing Committee is to report to the Assembly following which the Assembly may:

- (a) declare the Member to be disqualified from membership of the Assembly,
- (b) if it finds that disqualification is not warranted in the circumstances but the Member is nevertheless deserving of punishment, by order suspend the Member's right to sit and vote on the Assembly for a stated period or until the fulfilment of a condition in the order, or
- (c) declare that the Member is not disqualified if it finds that the allegations in the motion are not proven or that disqualification is not warranted in the circumstances.

PROVISIONS IN OTHER PROVINCES

BRITISH COLUMBIA

In British Columbia all council members, school trustees, members of the legislative assembly and various local and provincial employees are required under the Financial Disclosure Act to file a written disclosure of

- (a) any corporation in which he has one or more shares
- (b) any business from which he receives remuneration as an employee, officer or owner
- (c) any creditor to whom he owes a debt
- (d) any land which he owns.

Additional provisions are made for a person who controls more than 30% of the voting rights for the election of directors regarding disclosure of any subsidiaries. For municipal officials items (b) and (d) are limited to those businesses and lands located in the regional district in which the municipality is situated.

A written disclosure is required to be filed with a candidate's nomination papers and between January 1 and 15 and July 1 and 15 in each year. Anyone can inspect a councillor's written disclosure on request during normal business hours at the office of the disclosure clerk, who in the case of municipalities is the municipal secretary. Failure to file a written disclosure is punishable by a fine of up to \$10,000. If an interest is knowingly omitted from the written disclosure and a financial gain resulted, the court can order the payment of the gain to the municipality.

In addition councillors are also governed by the disqualification provisions of the Municipal Act. Section 82(1)(c) provides that a person is disqualified from being nominated, being elected and from holding office as a member of the council who "has, directly or indirectly, by himself or through another person, any contract or interest in a contract with or for the municipality". Section 82(1)(b) contains the same prohibition on the receipt of "any payment or remuneration from the municipality".

Section 83 provides a list of fourteen exceptions from the disqualification provisions:

83. A person is not disqualified under section 82 only because
- (a) he is a shareholder in an incorporated company having dealings or contracts with the municipality, provided he does not vote at a meeting of the council or a council committee on a question affecting the company;
 - (b) he is a shareholder in a mutual insurance company or a member of an incorporated association, credit union or society having dealings or contracts with the municipality; provided that, if he is an officer or employee of the company, association, credit union or society he does not vote at a meeting of the council or a council committee on a question affecting the company, association, credit union or society;
 - (c) where there is no other inhabitant of a village municipality capable of providing specific goods or service, he, with the approval of all the other members of council, contracts to provide specific goods or service to the village, provided that he does not vote at a meeting of the council or a council committee on a question affecting the contract;
 - (d) he, as beneficiary or personal representative of an estate, or otherwise involuntarily by operation of law, for not more than 12 months, is a party to or holds a contract with the municipality;
 - (e) in common with other inhabitants of the municipality and on like terms he contracts with the municipality for water or other municipal service;
 - (f) in common with other inhabitants of the municipality and on like terms, he contracts with the municipality on sidewalk crossings, easements, retaining walls adjacent to streets, street widening, building lines, or encroachments on, under or over a street;

- (g) in common with other inhabitants of the municipality and on like terms, he purchases or holds any debentures of the municipality;
- (h) he receives witness fees and conduct money for attending proceedings instituted by or against the municipality;
- (i) he receives compensation from the municipality under a bylaw made under section 933(4) of this Act or the Coroners Act;
- (j) he receives an honorarium, or travelling or other expenses, from the Canadian Federation of Municipalities, the Union of British Columbia Municipalities, or any district or local municipal association certified by the Union of British Columbia Municipalities;
- (k) he receives remuneration as a member of the municipal volunteer fire brigade, or volunteer ambulance service or volunteer emergency measures organization;
- (l) he provides goods or services to a person receiving public assistance where that person has freedom to choose the provider;
- (m) he is paid the lawful remuneration provided for a member of the council or a director of a regional district, any sum under section 270 or under Part 14 of the Assessment Act, or a refund of an overpayment made by or on his behalf to the municipality; or
- (n) he ceases, after having been elected as a member of the council, to have the qualifications that would entitle a person to have his name entered on the list of electors, if within one month he regains the qualifications.

There are also several provisions relating to improper or unauthorized financial transactions which carry disqualification of five years from the date of the offence.

SASKATCHEWAN

In Saskatchewan the Urban Municipality Act, Rural Municipalities Act and Northern Municipalities Act all contain conflict of interest provisions.

Under the Urban Municipalities Act councillors of all cities are required to file with the municipal secretary, within 30 days of taking office, a written disclosure of all land and buildings owned by him, his spouse or a corporation in which he or his spouse is an officer or has a controlling interest, located within the city or within an adjoining municipality. He also has to notify the secretary within 30 days of any change in his holdings. Failure to file either statement results in disqualification from holding office in any municipality for not more than three years.

Councils of other urban municipalities and of municipalities under the Northern Municipalities Act may by bylaw require written disclosures to be made. Councillors of rural municipalities are not required to file a written disclosure unless they are appointed to a district planning commission and other members of the commission have been required to make a disclosure under the Urban Municipalities Act.

In urban and northern municipalities a councillor who has a pecuniary interest is to disclose that he has an interest and take no part in the discussion or vote and is not to attempt in any way to influence the vote before, during or after the meeting. Contravention of the provision may lead to disqualification for up to three years for membership on any municipal council. In rural municipalities a councillor is required to disclose his interest and refrain from voting. Contravention may lead to a fine of up to \$50 and disqualification from membership on the council for three years.

In rural municipalities no person is qualified for nomination or election "who has by himself or his partner any interest in a contract with or on behalf of the municipality, or who is indebted to the municipality." Several exclusions are provided as follows:

- 27(1) Notwithstanding section 25, no person shall be disqualified from being nominated or elected as a member of the council by reason of his purchasing or becoming the holder of securities of the municipality on terms common to all persons or by reason of his having entered into an agreement with the municipality:
 - (a) for the removal of snow from his land as part of a scheme for the removal of snow from municipal roads, in which scheme residents of the municipality other than or in addition to members of the council are participating;
 - (b) for the sale to the municipality of land, earth or gravel required in constructing or repairing a road; or
 - (c) for the lease to him of a public highway or road which has been closed pursuant to section 211, if he owns the land adjoining such public highway or road.
- (2) Notwithstanding section 25 no person shall be disqualified from being nominated or elected as a member of the council by reason of his having work done by the municipality pursuant to section 230 on land occupied by him, where the municipality has done similar work in the current year for two or more persons who are not members of the council.
- (3) Notwithstanding section 25, no person shall be disqualified from being nominated or elected as a member of the council by reason of his employment in operating snow removal equipment or machinery for, or as part of, a group of persons who have a contract with the municipality to remove snow from municipal roads.
- (4) Notwithstanding section 25, no person shall be disqualified from being nominated or elected a member of the council by reason of his having an interest in a contract with the municipality for goods or services or goods and services if:
 - (a) the goods or services are not readily available from some other person in the municipality;
 - (b) the price for such goods or services is reasonable; and
 - (c) every member of the council present and eligible to vote votes in favour of the contract.

In urban and northern municipalities there is no prohibition on conducting business with the municipality. The emphasis is on declaration of pecuniary interest and abstention from discussion, voting or attempting to influence the vote.

MANITOBA

Manitoba's Municipal Conflict of Interest Act came into force on October 26, 1983, and applies to all municipalities in that province. This Act includes the concept of a pecuniary liability as well as a pecuniary interest. In addition, to disclosing his own direct or indirect pecuniary interest, a councillor must disclose the direct or indirect pecuniary liability of himself or any of his dependents to any person or organization which has a direct or indirect pecuniary interest in the matter under consideration.

Upon disclosing the general nature of the direct or indirect pecuniary interest or liability, the councillor is to withdraw from the meeting without discussing or voting and is to refrain at all times from influencing the matter. The disclosure provisions applies to any meeting of council, a committee, sub-committee, commission, board or agency on which a councillor serves in his official capacity as a councillor and includes a court of revision. If a councillor is absent from a meeting, he is to make his disclosure at the next general meeting of the body before which a matter arose in which he had an interest or liability.

The clerk of the municipality is to maintain a central record of all such disclosures which is open for public inspection during normal business hours.

In addition, prior to taking the annual oath of office, each councillor is to file a statement of assets and interests with the municipal clerk. Any acquisitions or disposals are to be reported within 30 days. To be included in the statement are:

- (a) land holdings,
- (b) corporations in which 5% or more of the shares are held by the councillor or his dependents,
- (c) the name of any person or organization from which the councillor or his dependents receive remuneration as an officer, owner, director, partner or employee,
- (d) bond holdings excluding government bonds,
- (e) investment fund, mutual fund, or similar securities,
- (f) interest in property expected from a trust or will or respecting which the councillor or his dependent is administrator, executor or trustee,
- (g) the nature and identity of the donor of any gift excluding family gifts,
- (h) the general nature of any contract between the municipality and the councillor, his dependents, a corporation in which he has 5% or more of the shares or a partnership in which he is a partner.

In the statement the councillor is not required:

- (a) to disclose any gift unless it or the total of all gifts in the past year from the same donor is worth \$250 or more,
- (b) to disclose any asset or interest worth less than \$500,
- (c) to estimate the value of any asset or interest disclosed,
- (d) to disclose any asset or interest acquired more than two years before the person was elected to the council for the first time.

The clerk is not to let anyone inspect the statements nor is he to reveal the contents of the statements except that a councillor may examine his own statement and if a person identifies a specific asset or interest in respect of which a violation of the Act may have occurred, the clerk is to inform the person whether or not the statements disclose that asset or interest.

The Act gives the councillor the right to represent himself before the council on matters relating to zoning bylaws and complaints respecting business, realty or local improvement assessment but he is not to vote on the matter.

ONTARIO

The Ontario Municipal Conflict of Interest Act, 1983, came into force on March 1, 1983. The Act and its implications are exhaustively reviewed in Municipal Conflict of Interest (Smither, H.J., Municipal World Inc., St. Thomas, Ontario, 1983).

The Act applies to councils, school boards and a host of local boards and committees. It provides that the interests of a spouse, parent or child are interests of a member if they are known to him.

If a member has a direct or indirect pecuniary interest in any matter under consideration, he is to disclose the general nature of the interest, abstain from discussion and voting on the matter and to refrain from attempting to in any way influence the vote before, during or after the meeting. If the meeting is being held in camera, the member is to leave the meeting. If he was absent from a meeting at which such a matter arose, he is to disclose his interest at the next meeting. The secretary is to record each disclosure in the minutes of the meeting and if the meeting was not in camera the general nature of the interest disclosed.

Disclosure and abstention is not required in respect of any interest a member may have in any matter

- (a) as a user of any public utility service supplied to him by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
- (b) by reason of his being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
- (c) by reason of his purchasing or owning a debenture of the municipality or local board;

- (d) by reason of his having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to all other electors;
- (e) by reason of having an interest in any property affected by a work under the Drainage Act or under the Local Improvement Act;
- (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the Assessment Act;
- (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (h) by reason only of his being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of his being a member of a board, commission, or other body as an appointee of a council or local board;
- (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which he may be entitled by reason of being a member or under a by-law passed pursuant to section 252 of the Municipal Act, or as a member of a volunteer fire brigade, as the case may be;
- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

There is no prohibition on transacting business with the municipality. Under the Ontario Municipal Elections Act authority is given to a council to pass a bylaw regulating election contributions and requiring the reporting of election expenses and contributions.

QUEBEC

In Quebec the conduct of councillors is governed by the Municipal Bribery and Corruption Act. Any councillor who knowingly has an interest in or has derived any remuneration from a contract with the municipality during his term in office is liable to disqualification for five years. This disqualification is reduced to the remainder of the term if the amount of money involved does not exceed fifty dollars per year. This provision, however, does not apply to shareholders of a "bona fide incorporated company".

No councillor may be appointed to any office in the gift of the municipality nor may he hold any office or place of profit in the pay of the municipality.

The council of a municipality or twenty electors may petition the Quebec Superior Court for an investigation into any matter mentioned in the petition relating to a malfeasance, breach of trust or other misconduct on the part of one or more councillors or municipal officials. If the judge finds reason to do so he may order the person charged to reimburse the municipality or any other person, declare the person to be disqualified from holding any municipal office for the period determined in the judgement and award costs.

The Act is to operate notwithstanding sections 2 and 7 to 15 of the Constitution Act, 1982.

NEW BRUNSWICK

The New Brunswick Municipalities Act provides that a councillor has a conflict of interest if he or a family associate

- (a) has an interest in any contract in which the council has an interest or in any other matter in which the council is concerned that would be of financial benefit to himself or the family associate,
- (b) is a partner of a person or in the case of a councillor is an employee of a person who has an interest in a contract or any other matter in which the council has an interest that would be of financial benefit to the partner or employer,
- (c) is a shareholder, director or officer of a private company or a director, senior officer or holds a controlling interest in a public company that has such a financial interest,
- (d) would otherwise benefit financially by a decision of the council.

A councillor who is a member or employee of a trade union that has or is seeking to enter into a collective agreement with the municipality has a conflict with respect to any matter relating to the negotiation or administration of the agreement.

A councillor does not have a conflict by reason only that he or the family associate, as the case may be, is:

- (a) a qualified voter, an owner-occupier of residential property, or a user of any public utility service supplied to him by the municipality or local board in like manner and subject to like conditions as are applicable in the case of persons who are not members;

- (b) entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
- (c) a purchaser or owner of a debenture of the municipality or local board;
- (d) a person who has made a deposit with a municipality or local board, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to other qualified voters;
- (e) eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (f) a person having an interest in land valued in use as farm land or farm woodlot under the Assessment Act or being registered under the Farm Land Identification Program under the Real Property Tax Act;
- (g) a director or senior officer of a company incorporated for the purpose of carrying on business for and on behalf of a municipality or local board, or being a member of a board, commission, or other body as an appointee of the council or local board of which he is a member;
- (h) in receipt of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which he may be entitled by reason of being a member of the council or local board, or as a member of a volunteer fire brigade;
- (i) an honorary member of a trade union;
- (j) a person having any interest which is an interest in common with voters generally;
- (k) a person having an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member; or
- (l) a member or officer of a service club or charitable organization that is in receipt of a benefit from the municipality or local board.

Upon being elected a councillor is to file a statement in the prescribed form with the clerk of the municipality disclosing any conflict of interest of which he has knowledge but does not have to disclose the particulars or the extent of his interest. He is also to file a similar statement where a conflict arises while he is in office. These disclosures are available for inspection by an elector or resident during regular office hours.

When a councillor has a conflict of interest at any meeting at which the business of the municipality is being conducted he is to disclose that he has an interest and immediately withdraw from the meeting while the matter is under consideration or vote. These verbal declarations are to be recorded in the minutes of the meeting.

If a councillor is not certain as to whether he has a conflict, he may disclose by affidavit to the Minister of Municipal Affairs the full particulars of his interest and the Minister may determine whether or not he has a conflict. If the Minister determines that there is no conflict, the councillor may discuss and vote on the matter.

A councillor is prohibited from attempting to influence the decision, by either council or an employee, on any matter in which he has an interest. He is also not to accept any fee, gift or other benefit that could reasonably be seen to influence any decision or to use any privileged information for his personal gain.

Acceptance of a gift or use of privileged information is punishable by a fine of up to \$10,000 and/or imprisonment for up to a year, restitution of the financial gain and disqualification for such period as the court may determine.

NOVA SCOTIA

The Nova Scotia Municipal Conflict of Interest Act provides that where a councillor has a direct or indirect pecuniary interest he shall disclose the general nature of the interest, withdraw from his place as a member, refrain from discussing, voting or attempting to influence the decision on the matter. If the meeting is in camera he is to leave the room. If he was absent from the meeting he is to disclose his interest at the next meeting and the provisions apply to an interest he intends to obtain as well as to one which he has.

Every declaration is to be recorded in the minutes of the meeting and also in a Central Record of Disclosure which is open to inspection by any elector at all reasonable times.

The declaration provisions do not apply to any interest a councillor may have:

- (a) as an elector;
- (b) by reason of being entitled to receive any service, commodity or other benefit offered by the municipality or local board in like matter and subject to the like conditions as are applicable to persons who are not members;
- (c) by reason of his purchasing or owning a debenture or other security issued by the municipality or local board;
- (d) by reason of his having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to other electors;
- (e) by reason of being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (f) by reason of being eligible for appointment, or having been appointed, by the council to a local board;

- (g) by reason only of being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board;
- (h) by reason of having been appointed by the council or local board to a board, committee or other body;
- (i) with respect to any allowance, honorarium, remuneration, salary or benefit to which he is or may be entitled by reason of being a member or by reason of having been appointed, by the council or local board, to a local board or other board, committee or other body;
- (j) by reason of having a pecuniary interest which is an interest in common with electors generally;
- (k) by reason only of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

PRINCE EDWARD ISLAND

The Prince Edward Island Municipalities Act contains a simple provision that no councillor shall derive any profit or financial advantage from his position as a member of the council and where he has a pecuniary interest or is affected by any matter before the council, he shall declare his interest and abstain from discussion and voting.

NEWFOUNDLAND

The Newfoundland Municipalities Act provides that no councillor shall discuss or vote on any matter before the council or a council committee where:

- (a) he has an interest in the matter distinct from any interest arising from his functions as a councillors;
- (b) he has a pecuniary interest directly or indirectly in that matter; or
- (c) he is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a pecuniary interest in that matter.

The Act goes on to exclude any matter that is related to all the citizens of the municipality or class thereof and to clarify that the prohibition on voting and discussion only applies to an interest of the councillor that is separate and distinct from an interest held in common with the other citizens of the municipality or class thereof.

If a councillor has an interest he is to declare it and if he is presiding at the meeting he is to vacate the chair. If the meeting is in camera, he is to leave the meeting. If a councillor is in doubt as to whether he has a conflict he may disclose his interest, the council may decide the question by majority vote and its decision is final.

The council may provide that councillors complete a disclosure statement, in a form and manner prescribed by the council, setting out the interest of a councillor that may place him in a conflict of interest and may also provide that such statements be available for public access.

NORTHWEST TERRITORIES

The Northwest Territories Conflict of Interest Ordinance provides that where a councillor has an interest in any contract or proposed contract with the municipality, or one that is reasonably likely to be affected by a decision of the council, or in any other matter in which the council is concerned, he is to disclose the nature and extent of his interest and refrain from discussion, voting or attempting to influence the voting on the matter. If he was absent from the meeting at which the matter was discussed he is to make his disclosure at the next meeting.

Disclosures are to be recorded in the meeting minutes. Contraventions of the provisions may result in disqualification for up to five years and a fine not exceeding \$5,000.

YUKON

The Yukon Municipal Act provides that a person is not eligible to become a councillor if he has, directly or indirectly any contract or any interest in any contract with the municipality.

The Act then makes several exceptions to the general rule by providing that a councillor is not disqualified by reason that:

- (a) he is a shareholder, officer, or director of a corporation, other than a society, that has dealings or contracts with the municipality;
- (b) he is a member, officer or employee of a society that has dealings or contracts with the municipality;
- (c) as executor, administrator, or involuntarily by operation of law, he is a party to or holds, for a period of more than 12 months, a contract with the municipality;
- (d) he receives in common with other inhabitants services that are contracted with the municipality (municipal services, easements and encroachment, purchase of any debenture of the municipality in common);
- (e) he receives witness fees and conduct money for attending proceedings involving the municipality;
- (f) he receives remuneration for serving as a member of the municipal volunteer fire or ambulance brigade or volunteer emergency measures organizations; or
- (g) he is providing services or goods to the municipality within the provisions of subsection 34(2).

and that a councillor may provide goods and services to the municipality where:

- (a) the sale of goods or services to the municipality or to persons contracting with the municipality are made at competitive prices by a dealer in those goods or services incidental to and in the ordinary course of his business; and
- (b) the member does not vote at any meeting of the council on any question affecting the contract for such goods or services.

Where the councillor is a shareholder, director or officer of a corporation he is not to discuss or vote on any matter affecting the corporation. Where he is a member, officer or employee of a society he is to declare his relationship to the society before discussing or voting on any matter related to it.

A council may pass a resolution declaring the office of a councillor vacant because in its opinion he has become disqualified under the Act from holding office as a member of council. The member may appeal the resolution to court which may either confirm the resolution or set it aside.

ANCILLARY RELATIONSHIPS

The concepts of direct and indirect interest in a matter before the council require definitions of what family and business relationships are significant enough that they might bias decision-making by a councillor.

FAMILY

In Alberta the family is described as the member "and spouse, parents, children, brothers and sisters" (section 29(2)(a)(i), Municipal Government Act) in the case of municipalities but only includes the spouse for Members of the Legislative Assembly (section 24(1)(a), Legislative Assembly Act).

The family relationship in the other provinces is described as follows:

British Columbia	spouse, child, brother, sister, mother or father
Saskatchewan	spouse, parent or child for purposes of defining a pecuniary interest but only the spouse for a disclosure statement
Manitoba	spouse and any child who resides with the councillor

Ontario	parent, spouse, child
New Brunswick	spouse, parent, child, brother or sister
Nova Scotia	spouse and son, daughter, father, mother, brother or sister of the member or his spouse, the spouse of such persons and any other person who normally resides in the same home as the member
Northwest Territories	dependent, spouse, son, daughter or other relative who has the same home as the member.

Ontario, Nova Scotia and the Northwest Territories qualify the family relationship by providing that the interest of a family member, if known to him, constitute an interest of the member.

BUSINESS

In Alberta a councillor is prohibited from voting on a question affecting

- (a) a private company of which he is a shareholder
- (b) a public company in which he holds more than 1% of the issued shares
- (c) a partnership or firm of which he is a member
- (d) a company of which he is a director.

He and his family can hold up to 25% of the shares in a company which has a contract with the municipality without disqualification.

A Member of the Legislative Assembly is deemed to be directly associated with

- (a) a company of which he is a director or senior officer
- (b) a private company
- (c) a partnership having not more than twenty partners.

The business relationship is described in other provinces as follows:

British Columbia	a corporation in which he or his trustee holds one or more shares, any business from which he receives remuneration as an employee, officer, owner or part owner, director, trustee or partner, and the subsidiaries of any company in which he holds more than 30% of the shares
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Saskatchewan	a corporation in which he or his agent, partner, spouse, parent or child has a controlling interest (more than 25% of the voting rights) or is a senior officer
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Manitoba

a corporation in which he or his nominee controls 5% or more of the value of the issued stock or is a director or officer, a subsidiary of such a corporation, a partnership or organization and includes the concept of a pecuniary liability of the member and of his spouse and any children who reside with the councillor

Ontario

a private company of which he or his nominee is a shareholder or officer, a corporation in which he or his nominee hold shares carrying more than 10% of the voting rights, a partnership, the employer of the member

New Brunswick

he or a family associate is a partner, employee, or a shareholder or officer in a private company or controls more than 10% of the shares or is an officer of a public company

Nova Scotia

a private company in which he or his nominee is a shareholder or officer, a public company in which he or his nominee controls shares carrying more than 10% of the voting rights or is an officer, a partnership, joint venture or employment relationship

Newfoundland	an incorporated or unincorporated company of which the member is an officer, employee or agent
Northwest Territories	a private company in which the member or his nominee owns more than one share or is an officer other than a nominal director, a public company in which he or his nominee has a controlling interest, a partnership or employee relationship
Yukon	a corporation of which the member is a shareholder or officer.

MUNICIPAL SUBMISSIONS

In December 1984, the Honourable Julian Koziak wrote to all municipalities informing them of the establishment of the committee and inviting their input. The responses, in the order of their receipt, are summarized as follows:

Village of Sangudo

The current legislation is a great deterrent in small villages where many people own small businesses or are related.

Village of Wabamun

The committee should look at the question of pecuniary interest where the member of council is affected by matters brought to the council by his employer. It does not seem right that in every situation the member of council should be disenfranchised. This is particularly a problem in "company towns".

Town of Hinton

Many of the provisions of the existing legislation are unclear and leave an elected official in doubt. A more easily understood set of rules and guidelines is required. Specific reference was made to "pecuniary interest", "direct or indirect" and "is a party to" as terms requiring clarification.

Municipal District
of Fairview

The purchase of additional right-of-way at the same price from a number of owners should not lead to disqualification of one of those owners who happens to be a councillor. The rules of residence require clarification with respect to a person who maintains residences in an urban municipality and on a farm, using the farm residence only when he is undertaking farming activities.

County of Flagstaff

Repeats the right-of-way purchase concern described above. Additionally, councillors feel uneasy in upgrading the road past their residence.

City of Red Deer

The prohibitions on a councillor purchasing land from the municipality should be relaxed with the institution of appropriate safeguards relating to market value.

Town of Vegreville

The legislation should be firm, clear and concise and should not be lessened.

Village of Irricana

Imprisonment for any term which would result in absence from three meetings would result in disqualification. Why is five years specified? The issue of small businessmen in small communities is also a concern.

Village of Berwyn

There should be clear and understandable "hard and fast" guidelines. The issue of small businessmen is again raised and it is suggested that the payment of an account, as distinct from the approval of a purchase, should not lead to disqualification. The terms "direct and indirect pecuniary interest" require clarification as do the situations of employees of the province or quasi-governmental bodies (e.g. senior citizen foundation) who sit on a council.

County of Lacombe

The purchase of right-of-way issue is raised. Clarification is required on such items as road construction adjacent to a councillor's land, land use changes affecting the value of a councillor's property and payment of accounts.

Village of

Paradise Valley

The issue of small businessmen is again raised with the suggestion that a guideline of so many miles from another source of supply for the product or service might be instituted.

Town of Morinville

There is difficulty in defining what is an interest in common and what is not. Also, votes on payments of accounts are frequently cumbersome under the existing provisions.

Town of Okotoks

The sections should be more specific so that council is not put in awkward positions trying to interpret the Act.

Town of Three Hills

Agrees with the 1983 AUMA proposal except that its extension to all boards, committees and commissions is too restrictive and the blind trust arrangement is not suitable to small communities.

Town of Beaverlodge

Agrees with the AUMA proposal for a separate Act which should also apply to municipal officers but does not support a blind trust provision for smaller communities.

Municipal District
of Provost

Obtaining a judge's order for the purchase of right-of-way from a councillor takes several months and costs about \$300 in legal fees in each instance. The judge's order should not be required.

County of Camrose

Terms such as "conflict of interest", "immediate family and dependency", "indirect pecuniary interest" require definition. A member declaring an interest should be required to leave the chamber. A separate Act for all local and provincial elected officials might be considered.

Mayor Cairns,

Vegreville

There may be instances where a member seeking a provincial appointment places that before the welfare of the community.

Town of Whitecourt

Supports a separate Act and the 1983 AUMA submission with some modifications. Opposes the concept of blind trust.

Mrs. Grace Roy, Clyde

Expresses concern at the potential for a conflict charge against a councillor who votes on a matter affecting a volunteer organization in the community of which he or she is a member or officer and requests clarification.

County of Strathcona

Suggests clarification of various provisions of the existing legislation and suggests that the emphasis should be on the declaration of interest. The county questions the necessity for the expense of obtaining a judge's certificate for simple road widenings and that elected persons should not be discriminated against in purchasing public property. The submission provides several examples of situations in which a councillor/mayor may not be in conflict under the existing legislation.

City of Edmonton

Suggests a clearer definition of "community of interest", that members should be eligible to vote on matters affecting any body on which the member serves as the appointee of the council, and that the term "indirect" pecuniary interest should be deleted for simplification of the sections.

PRINCIPLES FOR CONSIDERATION

The committee has reviewed all of the legislation of other provinces relating to conflict of interest for municipal elected officials, the Legislative Assembly Act of Alberta and has discussed the general issue with the Presidents and Executive Directors of the municipal associations across Canada. As a result of this review, the committee has reached the following conclusions:

1. TITLE

Strong representation was made to the committee that the term "conflict of interest legislation" is psychologically biased in that it implies wrong-doing. In fact, the purpose of the legislation is to provide guidelines to protect the public interest. It is noted that the term "conflict of interest" does not appear in the Municipal Government Act and the committee is of the opinion that it should not be introduced.

2. SEPARATE ACT

The 1984 AUMA resolution requested a separate Act, the 1983 AUMA draft proposed a separate Act, and some municipalities have individually requested a separate Act. In some other provinces the conflict of interest provisions are included in a separate Act but in most of these cases the provisions apply to more than municipal elected officials. The terms of reference of this

committee are related only to municipal affairs. The committee believes that there could be a separate Act applicable to all local authorities, just as the Local Authorities Election Act applies to all local elections. However, the committee can see little purpose in expanding the number of Acts with which a council member must be familiar if the provisions apply only to municipalities. The committee believes that such provisions are appropriately located in the Municipal Government Act in the same manner as the provincial provisions are located in the Legislative Assembly Act.

3. STATUTORY DISQUALIFICATION

A person should not be qualified to remain a member of council who

- (a) ceases to be eligible to be nominated as a candidate under the Local Authorities Election Act
- (b) is absent for three consecutive regular meetings of the council unless the council by resolution authorizes the absence
- (c) is sentenced to imprisonment for more than three months for an offence under any federal or provincial Act.

When a member is disqualified under this part he should resign and if he does not resign the council should by resolution request the Minister to declare the member's seat vacant. Upon being satisfied that the facts are correct, the Minister should declare the seat vacant and direct that a by-election be held or that the seat remain vacant until the next general election in accordance with the Municipal Government Act and the Local Authorities Election Act.

A member who is disqualified:

- (i) under (a) should be eligible for nomination for the next general election after the disqualifying factor has been eliminated
- (ii) under (b) at the next general election
- (iii) under (c) at the next general election after he has fulfilled the terms of the sentence.

4. DEFINITION OF INTEREST

A member of council should be deemed to have an "indirect pecuniary interest" in any matter before the council

- (a) affecting a private company in which he is a shareholder, director or senior officer
- (b) affecting a public company in which he owns equity shares carrying more than 10% of the voting rights attached to all equity shares of the company for the time being outstanding or is a director or senior officer
- (c) affecting a partnership or firm of which he is a member, or
- (d) affecting a private or public company, partnership, firm or person of which he is an employee.

"Direct pecuniary interest" should be defined as an interest of the member which may be measured monetarily.

5. FAMILY RELATIONSHIPS

The interests of the spouse, children or parents of the member, if known to the member or of which he reasonably should have known, should be deemed to be the interests of the member whether direct or indirect.

6. EXCLUSIONS

A member should not be considered to have a direct or indirect interest by virtue of any interest that he may have

- (a) as an elector, taxpayer, or utility customer of the municipality
- (b) by reason of his appointment by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the municipality or by reason only of his being appointed as the representative of the council on any board, commission, committee or other body
- (c) with respect to any allowance, honorarium, remuneration, salary or benefit to which he may be entitled by reason of being a member of the council or by reason of having been appointed by the council to a position described in (b)

- (d) by reason of his employment by the Government of Canada, the Government of Alberta, a federal or provincial crown corporation or agency, another municipality, a school board, a hospital or nursing home board, a senior citizen foundation, a local board of health or a library board
- (e) by reason of his being a member of a credit union, cooperative or a non-profit organization formed under the Societies Act or the Agricultural Societies Act or a service club except if he is an employee of the organization
- (f) by reason of his appointment as the chief or other officer of a volunteer fire department, volunteer ambulance service or volunteer emergency measures organization or of remuneration received as a member of one of those voluntary organizations
- (g) by reason of having an interest which is an interest in common with the majority of electors of the municipality or if the matter affects only part of the municipality with the majority of electors in that part, or
- (h) by reason of an interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member.

7. DISCLOSURE OF INTEREST

When a member has an interest in a matter before the council, any committee of council, or any board, commission, committee or agency to which he is appointed as a representative of the council, he should disclose his interest prior to any discussion on the matter. The disclosure should be recorded in the minutes of the meeting. In disclosing the interest, the member should state that he has an interest and describe its nature in general terms. It should not be necessary for the member to disclose the extent of his interest.

If after commencement of the discussion of a question a member realizes that he has an interest of which he could not reasonably have been aware at the outset, he should immediately disclose his interest as provided above.

8. AFTER DISCLOSURE

After disclosing his interest the member should abstain from any debate on the matter, should not vote on it and should abstain from in any way attempting to influence the decision.

After disclosing an interest the member should leave the room in which the meeting is being held until the matter is disposed of.

The member should not be required to leave the room where the matter is the payment of an account for an expenditure of the municipality which has previously been committed.

Where the member under the Municipal Government Act or any other Act has a statutory right to be heard by the council he should be allowed to answer questions posed by other members of the council on the facts or substance of the matter.

9. IF ABSENT

If the member is temporarily absent from the meeting during the time when a matter in which he has an interest is discussed, he should upon returning to the meeting comply with the disclosure provisions.

10. PRIOR RULING

If a member is not certain whether or not he has an interest which should be disclosed, he should be able to make an application to a judge prior to the meeting for direction as to whether or not he should make a disclosure and abstain from voting.

If the judge determines that he does not have an interest which requires disclosure there should be no further action possible regarding his disclosure or voting on the question.

11. FAILURE TO DISCLOSE OR ABSTAIN

When an elector ascertains that a member may have failed to disclose an interest or to abstain from voting or influencing a decision in which he had an interest, the elector should be able to apply to a judge for an order disqualifying the member within six weeks of becoming aware of the alleged contravention but not later than six years after the date it is alleged to have occurred.

When a council is concerned that one or more of its members may have contravened the disclosure provisions the council should, by resolution, be able to apply to a judge for an order

- (i) to determine whether or not there has been a contravention, or
- (ii) to disqualify the member(s) for a contravention.

12. POWERS OF JUDGE

Upon hearing an application by an elector or by a council, the judge should be able to

- (a) dismiss the application
- (b) disqualify the member and declare his seat vacant
- (c) require the member or former member to make restitution for any personal financial gain resulting from the contravention

- (d) determine that a contravention was inadvertent or by reason of a bona fide error in judgement and therefore declare that the member of former member is not subject to disqualification or to having his seat declared vacant.

13. APPEAL

The applicant elector or council or an affected member should be able to appeal the decision of the judge in accordance with normal court procedures.

14. COSTS ON DISMISSAL

If the judge dismisses the application, the costs and expenses of the member alleged to have been in contravention of the provisions should be an expense of the municipality and a municipality should be able to contract for insurance for this purpose.

RATIONALE FOR PRINCIPLES

The committee has been impressed with the general sincerity of elected officials in the desire to protect the integrity of their office. At the same time, the committee has noted a significant degree of frustration among elected officials over what is termed the vagueness or lack of clarity of the existing guidelines.

STATUTORY DISQUALIFICATIONS

The committee has noted that the general trend in this type of legislation has been to move away from emphasis on business dealings with the municipality and to concentrate on the activities of the person as a member of the council. Many smaller urban municipalities suggest that it is not in the public interest to prohibit business dealings since the councillor involved may be the sole supplier of a particular good or service in the community.

Rural municipalities have expressed concern over the time and expense involved in obtaining a judge's certificate that the price to be paid for road right-of-way to be acquired from a councillor is fair and reasonable. This is a particular concern where the council establishes a standard rate per acre, for example, which is paid to all affected owners. Similar concerns arise in urban municipalities where the price of lots is established by a land sales policy. In such cases there would seem little point in advertising the intended sale, since the availability of lots for sale is well known and the price has already been established.

The committee believes that the vast majority of Alberta's municipal elected officials are honorable persons. Secondly, the committee believes that the great majority of Alberta municipalities have in place purchasing and tendering policies and practices which are designed to ensure the best value for the dollar spent and the committee is aware that Alberta Municipal Affairs is actively assisting a number of municipalities by identifying the need for such policies and suggesting methods by which they may be developed.

Therefore, the committee has concluded that it is not necessary to retain the existing sections 29(1)(l), (m) and (n). The committee notes that if this principle is accepted consequential amendments will be required to the Local Authorities Election Act with respect to the qualifications for nomination. These amendments may be specific to candidates for municipal councils or could have general application to all local authorities.

The committee has suggested that the existing section 29(1) can be shortened to three subsections. By inserting the disqualifying factor "ceases to be eligible to be nominated as a candidate under the Local Authorities Election Act", the existing sections 29(1)(c), (d), (e), (g), (h), (i), (j) and (k) may be eliminated. This will also ensure conformity between the two Acts.

The committee proposes that the existing rule respecting absence from three consecutive meetings should be retained. The committee further proposes that any member who is sentenced to imprisonment for more than three months should be disqualified. Under the existing section 29(1)(a) a member who is

convicted of an indictable offence punishable by five years or more imprisonment is disqualified. This makes it difficult for the ordinary person to determine to which offences it applies and leaves open the possibility that a member could be sentenced to imprisonment for an offence which does not fall under that definition. The council then could pass a resolution authorizing his absence for more than three meetings and in effect the seat on council could remain vacant for an extended period contravening the intent of section 54 with regard to filling vacancies.

Since these disqualifying factors are now all matters of fact it would not appear necessary to require the time and expense of a court action to declare the seat vacant of the disqualified member. The committee therefore proposes that if the disqualified member does not resign, the council should be able to apply to the Minister for an order declaring the seat vacant and directing that a by-election be held in accordance with the Municipal Government Act and the Local Authorities Election Act. The reference to the Municipal Government Act is intended to make the provisions of sections 53 and 54 apply with regard to the necessity for a by-election.

DEFINITION OF INTEREST

One of the most frequent suggestions made to the committee was that there should be a clear definition of what constitutes an interest. The committee has attempted to do this in the proposed principles.

An indirect pecuniary interest is proposed as the interest which a member of council has in common with a limited group of other persons by virtue of an ownership position in a business, a senior officer or director position, or by virtue of his employment.

The employment question is a difficult consideration in "company towns". The committee considered excluding this where the employment relationship was governed by a collective bargaining agreement. However, the committee realizes that it may well be argued that what is good for the company may also be good for the union or for a union employee who aspires to a management position in the company. The committee would welcome advice on this matter.

The committee intends that "senior officer" will have the same definition as in the Companies Act and has proposed raising the shareholding in a public company from 1% of the number of shares issued (section 30(2)(a)(ii)) to shares carrying more than 10% of the voting rights to bring it into conformity with the "insider" provisions of the Companies Act.

A direct pecuniary interest is an interest of the member himself which may be measured monetarily.

FAMILY RELATIONSHIPS

The committee proposes that the interests of the spouse, children or parents of the member should be considered as the interests of the member, whether direct or indirect, as he may reasonably be expected to participate in some share of any benefit received by those persons. The committee proposes that this deeming provision should be limited to the interests of a family member of which the member knows or of which he reasonably should have known.

EXCLUSIONS

The committee proposes that a member should be able to vote on several matters from which he would otherwise be required to abstain. The committee believes that the public interest is not jeopardized if the member votes on a matter in which he has an interest

- (a) as an elector, taxpayer or utility customer. In such cases the member may have an interest which can be measured monetarily but it is an interest which he shares with all other electors, taxpayers or utility customers. The operations of the municipality would be strangled if these exclusions were not provided.
- (b) as the council's representative on any board, committee or commission. The purpose of council representation on any organization is largely defeated if the council member who is the representative cannot discuss its affairs with the council.
- (c) with respect to the payment of meeting fees or other remuneration. Council is specifically authorized under section 50 to determine its remuneration, under section 139.1 to establish a pension plan and under section 144 to establish an insurance plan for sickness, accident or death.
- (d) by reason of employment with another government or public agency. Many of the matters coming before a council involve intergovernmental relations in one form or another. The committee believes that the public interest is not jeopardized if a public employee votes on a matter affecting his public employer.

- (e) by reason of his membership in a community oriented group such as a credit union, cooperative, non-profit organization or service club. The committee is aware that it has been argued that a benefit given to such an organization may indirectly benefit the member through reduced membership fees, increased patronage dividends or the like. The committee does not believe that such considerations would bias the decision-making of a member of council. However, it does believe that the member should abstain if he is an employee as well as a member of the organization.
- (f) by reason of being appointed as an officer of a volunteer fire department, ambulance service or emergency measures organization. These are important services in a municipality which would have to be provided by the municipality if they were not provided voluntarily. The committee does not believe that the public interest is jeopardized if a member of council participates in these activities and receives the standard remuneration for them if any is provided.
- (g) by reason of having an interest in common with the majority of other persons in the municipality or the part of the municipality affected by the question.
- (h) by reason of having an interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member. The committee has borrowed this provision from Ontario and Nova Scotia. The intent is to ensure that some very minor technical interest, which is unlikely to bias the member, will be excluded.

DISCLOSURE PROVISIONS

The committee proposes that a member should be required to disclose his interest in any matter before the council in which he has an interest whether he was actually in the meeting room during the discussion or not. A councillor should be required to make such a disclosure at council meetings and at any meeting which he attends as a representative of the council.

The disclosure statement should indicate the general nature of the interest but to protect his private affairs the councillor should not be required to disclose the extent of his interest. The disclosure statement should be noted by the recording secretary in the minutes of the meeting at which it was made.

After disclosing the member should abstain from voice or vote or in any way attempting to influence the decision and for that purpose should leave the meeting room.

The committee proposes two exceptions to these procedures:

- (a) if the question relates to the payment of accounts for expenditures which have already been committed, the member should abstain but should not be required to leave the room;
- (b) if the question relates to a matter on which the member, as a property owner or by other qualification, has a statutory right to be heard, the member should be able to answer questions posed by other members of the council on the facts or substance of the matter. In many cases the remaining councillors may not have sufficient information available to make an informed decision and the abstaining councillor may well be the only person who can supply that information.

PRIOR RULING

The committee believes that a member of council who is not certain whether he has an interest which should be disclosed, should be able to apply to a judge prior to the meeting for a determination. The alternative is the existing general advice that "if you're not sure either abstain or consult your own solicitor". This frequently is not considered satisfactory advice, particularly when major policy matters are involved. If the judge determines that disclosure is not required then there should be no further action available with respect to the non-disclosure.

FAILURE TO ABSTAIN OR DISCLOSE

The committee proposes that the existing provisions for an action to disqualify basically be retained with the exception that the council should be able to apply to a judge for a determination as to whether or not a member should be disqualified. In the existing legislation the council must make an application to disqualify rather than asking for a determination without accusing one of its members.

COSTS ON DISMISSAL

If the judge dismisses the application, the committee proposes that the costs and expenses of the exonerated member should be a municipal expense since they were incurred as a result of the person's service as a member of council. The council should be able to contract for insurance for this purpose.